

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>1/7/2022</u>
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANDELA BROCK,

Plaintiff,

-against-

THE CITY OF NEW YORK; BILL DeBLASIO,

Defendants.

21-CV-11094 (AT)

ORDER OF SERVICE

ANALISA TORRES, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 28 U.S.C. § 1331, challenging the New York City vaccine mandate. By order dated January 5, 2022, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).

DISCUSSION

A. Defendant Bill DeBlasio

Plaintiff sues Bill DeBlasio solely in his official capacity as then-Mayor of the City of New York. Under Rule 25(d) of the Federal Rules of Civil Procedure, the Clerk of Court is directed to substitute Eric Adams, in his official capacity as Mayor of the City of New York, for former Mayor Bill DeBlasio.

B. Service on Defendants

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses and the complaint be served within

90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants the City of New York and Mayor Eric Adams through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, to substitute Eric Adams, in his official capacity as Mayor of the City of New York, for former Mayor Bill DeBlasio.

The Clerk of Court is further instructed to issue summonses, complete the USM-285 forms with the addresses for the City of New York and Mayor Eric Adams, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: January 7, 2022
New York, New York



ANALISA TORRES
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. The City of New York
100 Church Street
New York, New York 10007
2. Mayor Eric Adams
100 Church Street
New York, New York 10007